

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS

In re

REFRESHING USA, LLC,

Debtor.

NO. 24-33924-ARP

NO. 24-33919-ARP

NO. 24-33934-ARP

DECLARATION OF DAVID D. GRAEF
RE: LEASE ASSUMPTION

Now comes David D. Graef, and Declares as follows:

1. I am over 18 years old, possess first-hand knowledge of the facts set forth herein, and am competent to testify as to the matters below.

2. I am the leasing manager for the property located at 2732 Grand Ave., STE 122, Everett, WA 98201, formerly 1213 California Ave., STE 122, Everett, WA 98201. In that capacity, I make this declaration in support of the Herald Holdings, LLC's ("Herald") Motion for Relief from Stay (the "Motion.")

3. Herald, as Lessor, and VendPro, LLC as Lessee, are parties to that certain Herald Holdings, LLC building lease, dated October 3, 2014 and amended February 26, 2015 (the "Lease.") Attached hereto and incorporated by reference as Exhibit A is a true and correct copy of the fully executed Lease.

4. On or around February 26, 2015 Herald and the Lessee entered into a First Amendment to Lease (the "Amendment"), and together with the Lease, the "Lease.") Attached

hereto and incorporated by reference as Exhibit B is a true and correct copy of the Amendment. By way of brief summary, the Amendment allowed the Lessee a five-year lease term which converted to month-to-month tenancy in the event of a holdover.

5. The Lessee has told me that the automatic stay is in place as to this Lease and that the automatic stay is preventing Herald from moving forward with eviction proceedings under the lease or state law.

6. Although VendPro, LLC is the only allowed tenant/occupant on the Lease and although no assignments or subleases have been entered into, Herald has accepted rental payments from VendPro, LLC, Refreshing USA, LLC, and from Water Management, LLC all within the last year.

7. Under the terms of the Lease, no other tenants or occupants are allowed to share the space or sublease absent consent from Herald, which has not been given.

8. Lessee appears to be in violation of this provision.

9. No rental payments have been made on the Lease since August 9, 2024.

10. The Lease is now past due for \$27,321.06 as of November 1, 2024 with additional late fees occurring at a rate of \$10.00 per day.

11. As of December 1, 2024, there will be 36,569.88 owing on the Lease.

12. Herald has \$5,850.00 on hand as a credit to the last month's rental payment under the terms of the Lease.

13. Lessee's failure to pay rent when due and its sharing of the leased space are both violations of the lease.

14. Lessee's suggestion that it is protected by the bankruptcy stay in these proceedings if true necessitates the filing of this motion.

15. The failure to pay rent has put Herald Holdings, LLC in an extremely difficult position with regard to the overall operations of its holdings. Lessee should be paying its share

1 of the operating expenses and utilities in addition to its rental payments but has not been doing
2 so. This necessitates that Herald cover the costs out of its own coffers and is not sustainable.

3 16. We are filing this motion for relief from stay out of an abundance of caution.

4 I declare under penalty of perjury under the Laws of the State of Washington that the
5 foregoing is true and correct.

6 DATED this 28th day of October 2024 at Everett, WA.
7 City State

8 David D. Graef
9 David D. Graef